

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 Nevada Service Employees Union aka  
4 Service Employees International Union, Local  
1107,

5 Plaintiff

6 v.

7 Sunrise MountainView Hospital, Inc. dba  
MountainView Hospital

8 Defendant

Case No.: 2:22-cv-00668-JAD-EJY

Consolidated Case No.: 2:22-cv-00673-JAD-  
BNW

**Order Granting Motion to Compel  
Arbitration and Staying Case**

[Consolidated Case ECF No. 2]

9 This labor dispute stems from defendant Sunrise MountainView Hospital's firing of  
10 Bridgette Batiste and the resulting union grievance and settlement negotiations. Batiste's union,  
11 plaintiff Nevada Service Employees Union aka Service Employees International Union, Local  
12 1107, sues to compel arbitration because Batiste's grievance was not resolved through the  
13 collective-bargaining agreement's grievance-and-arbitration procedure. The hospital sues as  
14 well, contending that the parties agreed to a settlement that resolved the dispute and the union  
15 breached that settlement and the collective-bargaining agreements by trying to arbitrate a  
16 resolved grievance. The union moves to compel arbitration, arguing that any dispute over  
17 whether the parties resolved their dispute is a procedural question for the arbitrator. Because the  
18 subject of this dispute—Batiste's grievance—is clearly within the scope of the collective-  
19 bargaining agreement's arbitration clause and the outstanding question of whether the grievance  
20 was resolved is a procedural one, I find that the arbitrator must decide it and thus compel  
21 arbitration. And I stay the hospital's breach-of-contract claim pending that arbitration.

## Background

The hospital and the union entered into a collective-bargaining agreement (CBA) in 2020.<sup>1</sup> Article 10 of the CBA establishes a multi-step procedure to resolve grievances “by an employee or the union against the hospital for a breach of a specific provision of this agreement.”<sup>2</sup> It requires that the parties engage in a three-step process to attempt to resolve their grievance.<sup>3</sup> “In the event [that] the grievance has not been resolved” through that three-step process, the union may “advance the grievance to arbitration.”<sup>4</sup> The CBA further states that, “if there is an issue as to whether a grievance is barred for failure of the union or grievant to comply with the procedural requirements of this Article (procedural arbitrability), the arbitrator [will] have only the authority to address that question.”<sup>5</sup>

On September 15, 2021, the hospital discharged union member Bridgette Batiste.<sup>6</sup> The union brought a grievance on her behalf, contending that “Batiste’s employment was terminated without just cause or progressive discipline[] in violation of Article 9 of the CBA,” and the parties engaged in the grievance procedure contemplated in Article 10.<sup>7</sup> During step three, the union “requested that the hospital present [] Batiste with a []ast[-c]hance [a]greement” that would reinstate her employment.<sup>8</sup> The hospital did so and sent it to Batiste’s union

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<sup>1</sup> ECF No. 2 at 12–89 in *Nevada Serv. Employees Union v. Sunrise MountainView Hosp., Inc.*, Case No. 2:22-cv-00673-JAD-BNW (the consolidated case).

<sup>2</sup> *Id.* at 26.

<sup>3</sup> *Id.* at 27–28.

<sup>4</sup> *Id.* at 29.

<sup>5</sup> *Id.* at 30.

<sup>6</sup> *See* ECF No. 12. These undisputed facts are taken from the parties’ complaints, briefs, and exhibits and are not intended as findings of fact.

<sup>7</sup> ECF No. 2 at 9 (union representative Marcos Cardenas’s declaration).

<sup>8</sup> *Id.*

1 representative, who responded by asking whether the hospital would consider awarding backpay  
 2 for the time Batiste was unemployed.<sup>9</sup> MountainView responded that it would not.<sup>10</sup> A few  
 3 weeks later, the union representative sent MountainView an email stating that, “[o]nce the [last-  
 4 chance] agreement is signed by your representatives and [] Batiste, I will have [a union  
 5 representative] sign it.”<sup>11</sup> The hospital signed the agreement the next day,<sup>12</sup> but Batiste and the  
 6 union did not, and the union informed MountainView about a week later that it was exercising its  
 7 right to arbitrate Batiste’s grievance.<sup>13</sup>

8 On April 22, 2022, the hospital filed a complaint against the union claiming that it  
 9 breached both the CBA and the settlement agreement when it sought to advance Batiste’s  
 10 grievance to arbitration.<sup>14</sup> A few hours later, the union filed a separate complaint claiming that  
 11 the hospital was refusing to arbitrate the grievance according to the CBA’s terms.<sup>15</sup> The cases  
 12 have since been consolidated.<sup>16</sup> The union moves to compel arbitration of the grievance.<sup>17</sup> The  
 13 hospital opposes, claiming that the settlement agreement resolved the grievance, thus barring  
 14 arbitration under the CBA’s terms, which limit arbitration to grievances that were not resolved  
 15 by the three-step process.<sup>18</sup> The union responds that whether the grievance was unresolved and  
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17 <sup>9</sup> ECF No. 1-2 at 2–5.

18 <sup>10</sup> *Id.*

19 <sup>11</sup> ECF No. 1-3 at 2.

20 <sup>12</sup> *Id.*

21 <sup>13</sup> ECF No. 1 at ¶ 13.

22 <sup>14</sup> *Id.*

23 <sup>15</sup> ECF No. 1 in the consolidated case.

<sup>16</sup> ECF No. 8.

<sup>17</sup> ECF No. 2 in the consolidated case.

<sup>18</sup> ECF No. 12.

1 thus subject to arbitration is a procedural question delegated to the arbitrator under both the CBA  
 2 and applicable federal law.<sup>19</sup>

### 3 Discussion

#### 4 I. The Batiste grievance must be arbitrated.

5 The union brings its motion under § 301 of the Labor Management Relations Act, which  
 6 “empowers the federal courts to fashion rules of federal common law to govern suits for  
 7 violation of contracts between an employer and a labor organization under the federal labor  
 8 laws.”<sup>20</sup> The Supreme Court has repeatedly confirmed “the federal policy of settling labor  
 9 disputes by arbitration” and notes that “federal courts [] often look[] to the Federal Arbitration  
 10 Act (FAA) for guidance in labor arbitration cases.”<sup>21</sup> “In disputes involving a [CBA] with  
 11 arbitration provisions, the arbitrability inquiry begins with a presumption of arbitrability.”<sup>22</sup>  
 12 “[S]ubstantive arbitrability, i.e., ‘whether a collective bargaining agreement creates a duty for the  
 13 parties to arbitrate the particular grievance,’ is a question for judicial determination unless the  
 14 parties ‘clearly and unmistakably provide otherwise.’”<sup>23</sup> “Questions of procedural arbitrability,  
 15 by contrast, are presumptively for the arbitrator.”<sup>24</sup> Procedural arbitrability concerns issues of  
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19 <sup>19</sup> ECF No. 2 in the consolidated case; ECF No. 14 in the lead case.

20 <sup>20</sup> *United Paperworkers Int’l. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 40 n.9 (1987)  
 21 (cleaned up).

22 <sup>21</sup> *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596 (1960) (cleaned  
 23 up); *United Paperworkers Int’l Union, AFL-CIO*, 484 U.S. at 36; 40 n.9.

<sup>22</sup> *Local Joint Exec. Bd. v. Mirage Casino-Hotel, Inc.*, 911 F.3d 588, 596 (9th Cir. 2018) (citing  
*AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650 (1986)).

<sup>23</sup> *Id.* at 595–96 (citing *AT&T Techs.*, 475 U.S. at 649).

<sup>24</sup> *Id.* at 596 (citing *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84–85 (2002)).

1 timeliness, waiver, equitable estoppel, compliance with contractual prerequisites to arbitrate, and  
 2 other “gateway” matters.<sup>25</sup>

3 The union contends that Batiste’s grievance is clearly arbitrable under the CBA’s terms.  
 4 The hospital does not deny that the subject matter of the grievance is arbitrable under the CBA’s  
 5 grievance-and-arbitration provision but instead argues that it ceased to be so when the parties  
 6 resolved their dispute by agreeing to sign the last-chance agreement that MountainView offered  
 7 to reinstate Batiste. It relies on the CBA’s language allowing the union to seek arbitration “[i]n  
 8 the event [that] the grievance has not been resolved.”<sup>26</sup> The union responds that whether the  
 9 grievance was resolved is an issue of procedural arbitrability that must be submitted to  
 10 arbitration.

11 “Once it is determined . . . that the parties are obligated to submit the subject matter of a  
 12 dispute to arbitration, ‘procedural’ questions [that] grow out of the dispute and bear on its final  
 13 disposition should be left to the arbitrator.”<sup>27</sup> No one disputes that the subject matter of the  
 14 grievance—whether Batiste’s termination violated Article 9 of the CBA—is subject to the  
 15 agreement’s grievance-and-arbitration provision. Indeed, the parties engaged in the three-step  
 16 grievance process in their attempt to resolve the dispute. But the hospital’s contention that the  
 17 parties resolved their dispute and thus that the union is barred from compelling arbitration is  
 18 precisely the type of procedural defense that the Supreme Court held in *John Wiley & Sons, Inc.*  
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20 <sup>25</sup> See *Howsam*, 537 U.S. at 84–85 (timeliness and waiver are procedural issues that should be  
 21 left to the arbitrator); *Local Union No. 370 of Int’l Union of Operating Eng’rs v. Morrison-  
 22 Knudsen Co., Inc.*, 786 F.3d 1356, 1358 (9th Cir. 1986) (procedural questions of preclusion,  
 23 equitable estoppel, and timeliness should be left to arbitrator); *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 555–59 (1964) (alleged non-compliance with grievance procedure preceding arbitration should be resolved by arbitrator).

<sup>26</sup> ECF No. 2 at 29 in the consolidated case.

<sup>27</sup> *Livingston*, 376 U.S. at 557.

1 *v. Livingston* should be left to the arbitrator.<sup>28</sup> In *Livingston*, like here, the agreement provided  
 2 for arbitration “as the [final] stage of the grievance procedure,” which would only be reached “in  
 3 the event that the grievance shall not have been resolved or settled” in the previous stages.<sup>29</sup> The  
 4 party opposing arbitration contended that the initial stages of the procedure were not followed, so  
 5 it had “no duty to arbitrate.”<sup>30</sup> The Court held that the question of whether the parties fulfilled  
 6 the “procedural prerequisites” to arbitrate under the labor agreement was a matter for the  
 7 arbitrator, noting that this result was consistent with federal labor-law policy favoring  
 8 arbitration.<sup>31</sup>

9 MountainView’s argument that the union hasn’t met a condition of the CBA prompting  
 10 arbitration (i.e., showing that the grievance is unresolved) is similar to the procedural  
 11 prerequisite discussed in *Livingston*. I thus find that the hospital’s procedural defense is for the  
 12 arbitrator to decide. And MountainView’s argument that this dispute must be decided by the  
 13 courts because it concerns issues of “contract formation” is unavailing. The authority that the  
 14 hospital cites to support this argument concerns disputes over whether the contract containing the  
 15 arbitration provision was legally formed.<sup>32</sup> But the hospital does not contend that the CBA or its  
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17 <sup>28</sup> *Livingston*, 376 U.S. at 557.

18 <sup>29</sup> *Id.* at 556.

19 <sup>30</sup> *Id.*

20 <sup>31</sup> *Id.* at 557–59.

21 <sup>32</sup> See *Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 296 (2010) (noting that the  
 22 court “must resolve any issue that calls into question the formation or applicability of the specific  
 23 arbitration clause that a party seeks to have the court enforce” (emphasis added)).

MountainView also cites the Sixth Circuit’s opinion in *Bakers Union Factory, No. 326 v. ITT  
 Cont’l Baking Co., Inc.*, 749 F.2d 350, 355 (6th Cir. 1984), which held that a settlement  
 agreement stemming from a similar grievance process was binding on an arbitrator after that  
 settlement agreement was allegedly breached. But the issue of breach of the settlement  
 agreement was submitted to the arbitrator without dispute in that case, so its conclusions are  
 inapposite.

1 arbitration agreement was not properly formed. It instead argues that, because the parties dispute  
 2 the formation of the ancillary settlement agreement, that dispute must be decided by the court.  
 3 This argument thus finds no support in the authority that MountainView cites and is belied by  
 4 Supreme Court and Ninth Circuit precedent concerning procedural defenses to arbitration.<sup>33</sup> So I  
 5 grant the union's motion to compel arbitration and leave the question of whether the dispute was  
 6 resolved to the arbitrator.

7 **II. MountainView's breach-of-contract claim is stayed.**

8 The union argues that the hospital's breach-of-contract claim should also be subject to  
 9 arbitration, relying on Ninth Circuit precedent finding that settlement agreements "must be  
 10 arbitrated if the dispute relates to a subject that is within the scope of the CBA's arbitration  
 11 clause."<sup>34</sup> MountainView responds that, if the parties settled, the dispute falls outside of the  
 12 arbitration clause's scope because the CBA limits arbitration to unresolved disputes.<sup>35</sup> I find that  
 13 these arguments are premature so I decline to reach them at this stage. The arbitrator will get the  
 14 first opportunity to determine whether the parties "resolved" their dispute. If he or she finds that  
 15 they did not, the claim will remain with the arbitrator under the CBA's express terms. If the  
 16 settlement agreement is found to be a valid contract, the parties may renew their arguments  
 17 concerning whether its breach should be arbitrated or adjudicated.

18 **III. The union's attorney-fees request is denied.**

19 The union seeks an award of attorneys' fees it incurred prosecuting this matter in court,  
 20 contending that, "[g]iven the longstanding nature of the controlling law on this subject,

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 22 <sup>33</sup> See *supra* note 25.

23 <sup>34</sup> *Inlandboatmens Union of the Pac. v. Dutra Grp.*, 279 F.3d 1075, 1080 (9th Cir. 2002).

<sup>35</sup> ECF No. 12 at 8–9.

1 [MountainView's] refusal to arbitrate borders on being frivolous[] or the product of bad faith."<sup>36</sup>  
 2 MountainView responds that the union "cannot identify any evidence showing that [its]  
 3 opposition to arbitration is frivolous" and again points to the language in the CBA limiting  
 4 arbitration to unresolved grievances to contend that its opposition is based on the good-faith  
 5 believe that this dispute belongs in court.<sup>37</sup> The union has not sufficiently shown that  
 6 MountainView's opposition to arbitration is frivolous or was raised in bad faith. There are  
 7 genuine disputes going to the parties' conduct during settlement negotiations and the effect of  
 8 those negotiations on the arbitrability of this dispute that are not clearly resolved by controlling  
 9 authority. So I deny the union's request for attorneys' fees.

### 10 **Conclusion**

11 IT IS THEREFORE ORDERED that Nevada Service Employees Union aka Service  
 12 Employees International Union, Local 1107's motion to compel arbitration [**consolidated case**  
 13 **2:22-cv-00673-JAD-BNW ECF No. 2]** is **GRANTED**.

14 IT IS FURTHER ORDERED that Sunrise MountainView Hospital's breach-of-contract  
 15 claim is STAYED pending the conclusion of that arbitration.

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 18 U.S. District Judge Jennifer A. Dorsey  
 19 December 12, 2022  
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23 <sup>36</sup> ECF No. 2 at 6 in the consolidated case.

<sup>37</sup> ECF No. 12 at 9–10.